

Letter of Findings: 65-20220049
Indiana Oversize/Overweight Penalty Assessment
For the Year 2022

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department did not agree that Indiana Motor Carrier established that the imposition of the assessed oversize/overweight penalty was unwarranted; Motor Carrier's vehicle was significantly over the weight limitations and the bill of lading available to the driver established that the driver was aware of the problem.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-3; IC § 9-20-6-11; IC § 9-20-18-7; IC § 9-20-18-14.5; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of an oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of providing its customers excavation and demolition services. However, Taxpayer also offers land clearing, driveway construction, bridge renewal, equipment rental, and other similar services.

Publicly available information indicates that Taxpayer operates two tractors, four trailers, and employs three drivers. According to Taxpayer it "is actively involved in the tri-state area of Illinois, Indiana, and Kentucky."

Taxpayer operated one of its vehicles in Indiana during January 2022. The truck was being used to transport gravel from a quarry to a construction project. The vehicle was stopped by the Indiana State Police while traveling on Highway I-69.

The vehicle and its load were found to be overweight. The officer determined that the truck's gross weight was 92,700 pounds which was 12,700 pounds over the 80,000-pound limit. In addition, the officer noted that the "trailer tandem" axle weight was 49,700 pounds which was 15,700 pounds over the 34,000-pound limit. In addition, the quarry vendor's "bill of lading" indicated that the vehicle's gross weight was 92,920 pounds. The driver did not have an oversize/overweight permit.

The Indiana Department of Revenue ("Department") issued a \$5,000 "civil penalty" which the Department, in its notice and proposed assessment sent Taxpayer, described as "the maximum civil amount that may be imposed by Indiana law...."

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for its protest.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that, as noted above, the \$5,000 penalty is excessive. In its initial protest letter, Taxpayer sought to settle the \$5,000 penalty for \$250 and included a check for that amount. The Department rejected the proposal and returned the \$250 check.

The issue here is whether Taxpayer has met its burden of establishing that there are sufficient grounds justifying a reduction in the penalty amount. In its protest letter, Taxpayer raised a number of issues:

- Taxpayer explains that it is not a "big company" but has only a small staff which includes family members.
- Taxpayer is "a solid employer and [has] been for 30 years."

"A penalty of \$5,000 is something that would be tough for the company to overcome in this time of inflation and higher fuel prices."

As with any proposed assessment of a listed tax, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision are entitled to deference.

IC § 9-20-1-1 provides that "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

Once the carrier receives a permit, IC § 9-20-6-11(b) states that "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may also subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are "listed taxes." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop. In other words, the \$5,000 penalty at issue is over and above any other penalty paid to the local jurisdiction.

Indiana law directs the Department to consider certain, specific mitigating circumstances in deciding whether or not the penalty should be abated. IC § 9-20-4-3(b) and IC § 9-20-18-7(c) provide a 1.5 percent weight variance (or latitude) and a similar variance when the Taxpayer has no control over the amount loaded into the vehicle.

IC § 9-20-4-3(b) provides:

Because of the various types of scales used and the variance in scale weights, a penalty may not be assessed if the actual scale weight of a vehicle or combination of vehicles with load does not exceed *one and one-half percent* (1 1/2 [percent]) of the registered weight of the vehicle or combination of vehicles, including load. (*Emphasis added*).

In addition, Taxpayer cites to IC § 9-20-18-7(c) which provides in part:

- (a) A court shall determine the extent of liability of the driver, carrier, shipper, or other party shown to be liable.

(b) The *department of state revenue* shall determine the extent of the civil penalties assessed under *section 14.5* of this chapter.

(c) It is a criminal or civil defense if a party can show that the party:

- (1) could not reasonably have known the actual weight of the load involved;
- (2) had no access to or control of the loading of an overweighted load[.] (*Emphasis added*).

The Department acknowledges the business and personal conditions cited by Taxpayer in its defense. However, the Department is unable to conclude that Taxpayer has met its statutory burden under IC § 6-8.1-5-1(c) of establishing that the assessment was "wrong" or that the mitigating circumstances cited by Taxpayer necessarily lead to even a partial abatement of the \$5,000 penalty amount.

In this case, Taxpayer's overweight violation was significant. When Taxpayer's vehicle departed on its trip, the quarry's bill of lading indicated the vehicle's gross weight was 92,920 pounds which was some 16 percent over the maximum permitted weight.

Considering the "axle weight" noted by the officer, the Department notes that the weight was approximately 46 percent over the permitted axle weight.

In addition, Taxpayer has presented nothing which would establish that it "had no access to or control of the loading of an overweighted load" under IC § 9-20-18-7(c).

The Department is unable to disregard or minimize the extent of the violation determination and concludes that Taxpayer has not met its statutory burden under of IC § 6-8.1-5-1 establishing that the penalty was *wrong*. Although IC § 9-20-18-14.5 provides the Department latitude in considering verified and relevant mitigating circumstances under the statute's "not more than" language when generating a proposed assessment amount, the Department does not find itself with authority to reconsider the penalty amount under either the law or the circumstances.

FINDING

Taxpayer's protest respectfully denied.

July 5, 2022

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